

SPECIAL
EDITION

ASEAN CUSTOMS

PCA Bulletin • Volume X • May 2019





OUR JOURNEY



WHAT THEY SAID?



Faizal Bahrin

*Royal Customs and Excise Department
Brunei Darussalam*

"On behalf of RCED, I would like to congratulate Indonesia for publishing the 10th edition of the PCA Bulletin. It has been a useful platform for the discussion and sharing of cases in the CECWG meeting. RCED also convey its gratitude for the hard work of CECWG members and the commitment by Indonesia in publishing this PCA Bulletin. KEEP ON ROLLING GUYS."



Ng Chee Siong

*Head Trade Investigation
Singapore Customs*

"Our heartiest congratulations to the Indonesian Customs for the successful publication of the PCA Bulletin Volume X, and our appreciation to all the members of the ASEAN Customs Enforcement and Compliance Working Group (CECWG) for their active sharing of cases in the bulletin. The PCA Bulletin Volume X, and the previous publications, reflect the strong collaboration among the CECWG members to share their knowledge and experience in handling complex PCA cases."



Pheng Sok

*Customs Audit Department General Department
Customs and Excise of Cambodia*

"Congratulations Indonesia as Country Coordinator on PCA. Tenth edition on publishing bulletin is a milestone.. keep progressing guys...."



Thapanee Thurabhoka

*Post Clearance Audit Bureau
Thai Customs Department*

"Volume 10 and still counting..."

I, on behalf of Thai Customs Department, would like to express my sincere appreciation to Indonesia Customs for all her hard work on the ASEAN CECWG's PCA Bulletins until this 10th edition:

Thank you for getting the job done and Congratulations!"



Tin Tin Aye

*Assistant Director In Charge of PCA Section
Myanmar Customs Department*

"Congratulation for your publishing ten edition of PCA Bulletin."



ASEAN Secretariat

"We are pleased to extend our congratulations and appreciations to Indonesia as Country Coordinator of the Strategic Plan of Customs Development (SPCD) 8 on Post Clearance Audit (PCA) for publication of the 10th edition of the PCA Bulletin."

"The PCA Bulletin has become a very resourceful media, which is not only for the information and best-practise exchange, but also for sharing of the case studies in the field of PCA. This publication is one of the great contributions from the CECWG in promoting better understanding of the PCA mechanism in each ASEAN member state."

Rest assured that the ASEAN Secretariat will always support the SPCD 8 on PCA and the entire activities under the purview of CECWG."





2010



2011



2012



2013



2014



2015



2016



2017



2018

A DECADE OF PCA BULLETIN



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FROM THE COUNTRY'S COORDINATOR'S DESK



Kushari Supriyanto
*Director of Customs and
Excise Audit*
Directorate General of
Customs and Excise
Republic of Indonesia

It's a milestone...

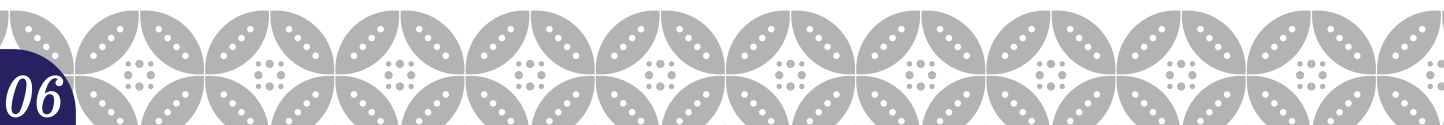
It is a pleasure for me to welcome you to PCA Bulletin, annual bulletin where we can share PCA matters to ASEAN Member States. Also, I am so delighted and proud as we are able to publish this tenth edition. Tenth edition means that we have been publishing this bulletin ten times in 10 years. It is an achievement for us as ASEAN Member States because in a decade, continually, we have been sharing all PCA matters through this bulletin.

As we all know, now, we are in the Fourth Industrial Revolution (Industry 4.0) era where most of industries utilize technology as a platform to save, manage, control and use data. This revolution is expected to have impact on all disciplines and sectors (including international trade and audit sector) and creating massive changes. Concurrent with the situation and to prepare for this challenge and changes, customs authorities should be able to establish a modern customs administration. One thing that we can do to cope with this advanced technology era is upgrading PCA officers capability and competency in measuring the level of compliance of companies through modern technology.

In addition to upgrading competency and capability, in order to get better result and more comprehensive data in PCA, strengthening cooperation and exchanging of information between customs & tax authorities plays an important role as well. By supported data from Tax, PCA becomes more comprehensive in examining companies data. Hence, in October 2019, we will hold ASEAN Workshop on Post Clearance Audit with theme "Increasing the Effectiveness of PCA through Customs and Tax Cooperation". I hope, this workshop will give ASEAN Member States new view and experiences regarding comprehensive PCA implementation.

Hereafter, I would like to express my sincere gratitude to Customs Enforcement and Compliance Working Group (CECWG), Coordinating Committee on Customs (CCC), and Customs Directors-General for always supporting PCA Bulletin and to ASEAN Member States for the active contribution by sending their PCA cases, surveys and articles for this bulletin. Last but not least, I hope this bulletin will give benefits for all readers in adding and widening their insight.

Regards,



FOREWORD BY THE CHAIR OF ASEAN DIRECTORS - GENERAL OF CUSTOMS

The function of Customs has evolved from its traditional role as a Revenue Collector to a facilitator in legitimate and secured trade. Many Customs Administrations and border agencies have embraced modern technologies and develop bilateral co-operations with neighbouring and trading countries to ensure better border management and freer flow of trade.

In this regard, a new and important area for ASEAN Customs is the Post Clearance Audit (PCA). The successful implementation of PCA in ASEAN will help strengthen enforcement and provide the necessary support and confidence in the implementation of trade facilitating measures and simplified procedures in cargo processing and valuation specifically.

Therefore, the development and application of ASEAN guidelines for Customs post-clearance audit based on best practices are to ensure maximum revenue yield, full compliance with import/export regulations and minimum interference to legitimate trade.

On behalf of the ASEAN Directors General of Customs, I would like to convey my sincere appreciation to all the members of Customs Enforcement and Compliance Working Group (CECWG) for their commitment in implementing Strategic Plan of Customs Development (SPCD) on Customs PCA.

I would also like to take this opportunity to congratulate the Editorial Team for their utmost effort in the publication of the Tenth Volume of Post-Clearance Audit bulletin. I strongly encourage all ASEAN Member States to contribute as many PCA cases as possible for the benefit of each other. Sharing will enrich everyone with more knowledge.

With best wishes,



Dato' Paddy Abd Halim
Chairman ASEAN Directors
General of Customs

FROM THE CHAIRMAN'S DESK



Mr Sazali Mohamad
Chairman
ASEAN Customs Enforcement
and Compliance Working
Group

It is my sincere pleasure to welcome you once again to the 10th volume of the Post Clearance Audit (PCA) Bulletin published by the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia in its capacity as the Country Coordinator of Strategic Plan of Customs Development (SPCD) on Customs PCA under the purview of the Customs Enforcement and Compliance Working Group (CECWG).

Post-clearance audit is a critical control mechanism for Customs and other border regulatory authorities as it enables them to apply a multi-layered risk-based control by moving from a strictly transaction-based control environment to a stronger audit-based approach.

Consequently, post-clearance audit allows the reduction of control activities at a border and at the time of arrival of goods to only those necessary to determine the admissibility of the goods. This can lead to a significant increase in revenue collection, as PCA allows a more comprehensive and holistic evaluation of the particulars necessary for the calculation of duties and taxes.

I would like to take this opportunity to express my gratitude to the Editorial Team and those who have supported and contributed to this edition of the PCA Bulletin by providing interesting PCA cases and invaluable constructive comments. Please continue to keep up the good work!

I am certain that the PCA Bulletin will prove to be a valuable tool in enabling all ASEAN Member States to learn through best practices from each other and to gain better insight of ASEAN Customs PCA.

Having said that, I hope ASEAN Member States will continue to support the Editorial Team by providing constructive comments, interesting cases and articles to be published in the next volume of the PCA Bulletin.

With warm regards,



PCA CASES





BRUNEI DARUSSALAM

CASE I

I. Facts of The Case

1. In November 2018, PCA Unit received information from Muara Container Terminal, Muara Customs Branch regarding a doubtful HS Code used on the importation of hydraulic brake fluid.
2. The items branded Powerlube Hydraulic imported by SD Pte. Ltd.

II. Findings

1. Initial assessment on the importation document and details of items were confirmed by Valuation, Classification and Tariff Unit to be categorized under lubricant oils.
2. PCA Unit decided to assess the importation

of SD Pte. Ltd. from 2017 consisting a total of fourteen declarations.

III. Modus Operandi

SD Pte. Ltd. used HS Code 2710.19.50.00 – Hydraulic brake fluid (Nil) where it should be HS Code 2710.19.43.00 – Other lubricating oils (44¢/dal).

IV. Decision

1. The shortage amount of import duties of \$10,776 (USD 7,809@1.38) was paid.
2. SD Pte. Ltd. was given a warning letter and reminded to use the actual HS Codes on next importation of lubricant oils.

CASE II

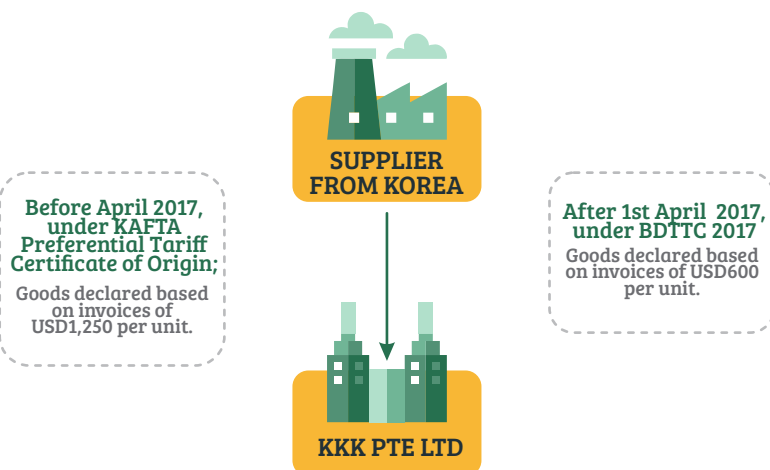
I. Facts of The Case

1. In October 2017, PCA Unit make an assessment on the importation of massage machines.
2. KKK Pte. Ltd. is one of the companies being assessed by PCA Unit based on importation of automatic thermal massager machines.

II. Findings

1. The assessment on the importation documents includes declarations under CEPT (Common Effective Preferential Tariff) Scheme, for a total of only seven declarations in 2017.

2. PCA Unit found that the amounts declared for each unit of massage chair were different in the declarations under Korea-ASEAN Free Trade Area (KAFTA) Preferential Tariff Certificate of Origin and declarations made under Brunei Darussalam National Single Window (BDNSW)
3. Under Brunei Darussalam Tariff and Trade Classification (BDTTC) implemented in April 2017, HS Code 90 1890 3000 was moved from 5% Import Duty to 5% Excise Duty thus there are no exemption of duties.



IV. Decision

1. The shortage amount of excise duties of \$3,837 (USD 2,780@1.38) was paid plus compound of \$1,000.
2. KKK Pte Ltd was given a warning letter and reminded to inform the forwarding agent on the real value for next batch of importation.

CASE III

I. Facts of The Case

BB Pte. Ltd. is one of the companies being assessed by PCA Unit based on common importation of electrical devices i.e. Light Fittings and Fixtures.

II. Findings

1. Upon investigation and assessment of the importation documents, PCA Unit discovered that Costs of Assist was not included in Price Actually Paid/Payable (PAPP) during time of importation as required to be adjusted, Customs (Valuation of Imported Goods) Rules, 2001;
2. Further inspection of documents, PCA Unit also found the payments made to the supplier for Transportation Costs varied from what has been declared. Thus, it needs to be adjusted as per Rule 12(1)(e), Customs (Valuation of Imported Goods) Rules, 2001.

III. Modus Operandi

The company did not include the Costs of Assist such as the packing of goods plus the design work and did not declare the actual Costs of Transportation of the imported goods in order to reduce the PAPP amount to pay less duties.

IV. Decision

1. Costs of Assist and Costs of Transportation were adjusted in accordance with the provisions of Rule 12 in Customs Rules, 2001 (Constitution of Brunei Darussalam).
2. Both costs were applied as part of PAPP and the shortage duty was paid by BB Pte Ltd upon summoned by RCED.



CAMBODIA

CASE I

I. Facts of The Case

1. Company A is dealership (Exclusive Rights) on 3 wheeled vehicles trying to create many companies (Company XXX, Company XYZ, ...) to import the above products to Cambodia.
2. Under the guidance of Company A, Company XYZ declared to import the products of 3 wheeled vehicles with HS code 8711.20.90.
3. The company said the product was '3 Wheeled Motorcycle without Steering Wheel, Reverse Gear, and Differential'.
4. Company tried to design User Manual and Product Catalogue as motorcycle for Cambodia market.

II. Findings

1. PCA Team is suspicious that the products should be classified as vehicle, not motorcycle. PCA Team started to investigate in workshop, street, and had joint physical inspection at Clearance Checkpoint.
2. The products were found in public road and workshop were attached with reverse gear. PCA Team interviewed with workshop staff, they said the company sold 3 wheeled vehicle together with reverse gear part and return some fee to install reverse gear.
3. At inspection side, PCA Team found concrete proof at engine, body and electric system. With the evidence, they were ready to install reverse gear.
4. Base on General Rules for the interpretation of the Harmonized System Rule 2 a, the products have to be classified into 8703.21.29

III. Modus Operandi

The Company XYZ declared HS Code of the 3 wheeled motorcycle as 8711.20.90 with customs duty and tax rate, 15%+15%+10%, while the correct HS Code should be 8703.21.29 35%+35%+10%

IV. Decision

1. PCA Team decided to reject the company XYZ declaration and requested the company XYZ to use the HS Code of the product by 8703.21.29.
2. Company XYZ is obliged to pay additional duties, taxes, and penalty totally \$526,302.788.
3. Company XYZ, and other companies who imported 3 wheeled vehicles faced the same PCA scheme.





INDONESIA

CASE I

I. Facts of The Case

FFI is a trading company that imports and sells photography equipment, printing tools and medical devices. This was the first audit of customs and excise for FFI Company.

II. Findings

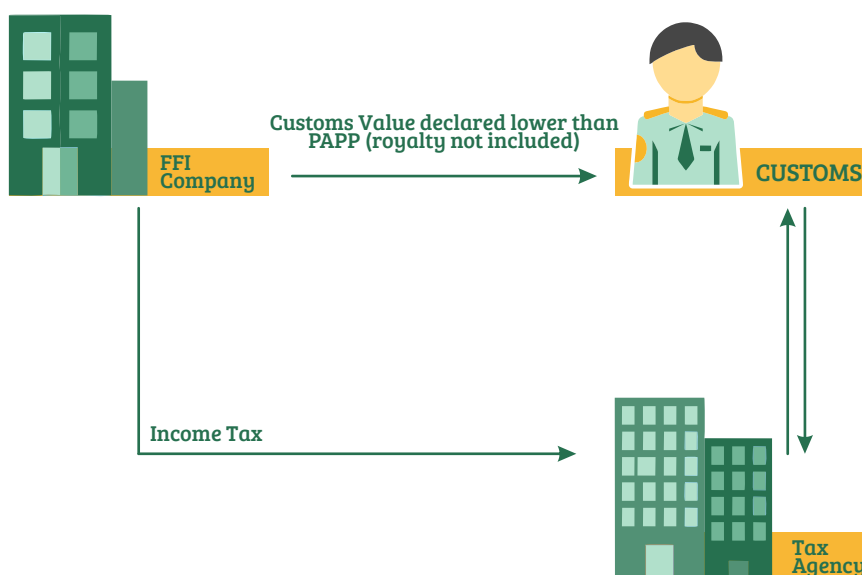
According to the result of the audit examination between Indonesian Customs and Tax Agency, FFI should add royalty fee to the Customs Value. The Findings was based on examination in Tax Income reported by FFI Company to the Tax Agency. FFI Company didn't know that royalty fee should be added to the Customs Value.

III. Modus Operandi

1. There was royalty agreement between FFI (ID) and FFI (JPN). FFI (ID) should pay certain fee to FFI (JPN) 1,5% from sales by the end of the year.
2. There were monthly allowances of royalty for sales. FFI Company own this kind of transaction as royalty expense every month.
3. By the end of the year, FFI (JPN) send Royalty Fee Invoice that should be paid by FFI (ID).
4. Based on the payment of royalty fee, FFI (ID) should pay Tax Income to Tax Agency.

IV. Result

Audit team decided that royalty fee should be added to Customs Value. Based on audit findings, the amount of billing that FFI Company had to pay was IDR 6.549.804.000 (approximately \$485.170).



CASE II

I. Facts of The Case

PI Company is a company engaged in the gas tube light trading industry (electric discharge lamp). PI Company is a multinational company with a parent company in Netherlands. The company had been audited by Indonesia Customs five times.

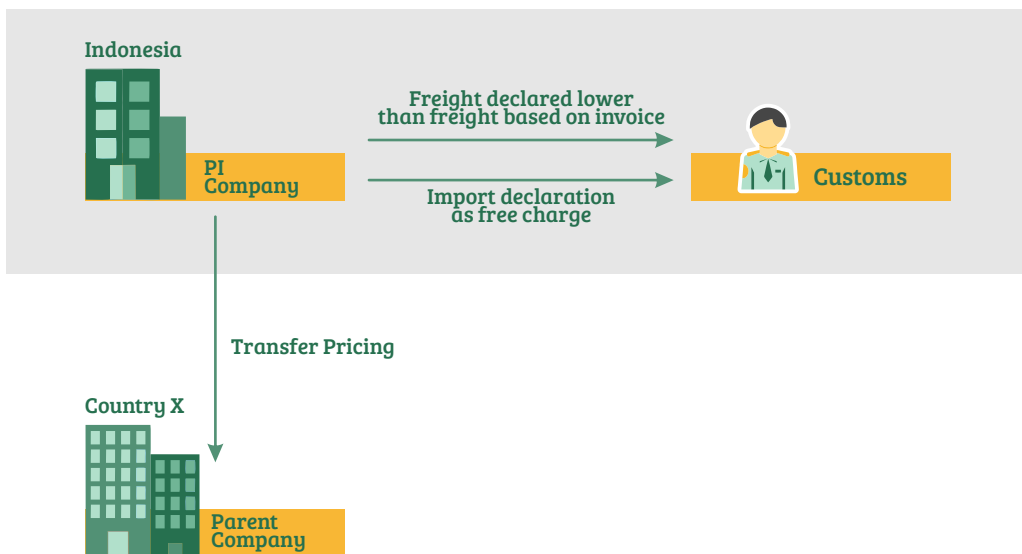
II. Findings

From the examination, the audit team found some other payments to the parent company based on

account payable (A/P) ledger and bank ledger. This value has not been added to the customs value.

III. Modus Operandi

After doing clarification to the auditee, it is known that the payment done is referred to them as transfer pricing. The payment can only be determined after the sales and calculated in a certain period. The parent company calculates the value of the excess profits from the imported goods.



IV. Decision

It was concluded that the payment is related to imported goods and sent to the parent company. The audit team decides that this payment is a payment that must be added to the customs value. As the consequence, PI Company is obliged to pay the shortage of import duties and taxes in the form of imports and a fine Rp 18 Billion (approximately USD\$1.333.333)

CASE III

I. Facts of The Case

SIK Company is a company engaged in large trade of electronic and telecommunication equipment field. The main import of the company is Electronic Data Capture Machine (EDC Machine) and spareparts.

II. Findings

Audit team did assessment to some documents and company internal record, such as: Agreement of Electronic Data Capture's Rental Project (between SIK Company and PTL), Purchase Order document, Work Order Letter, Financial Report, Ledger etc. From the assessment, audit team found three modus operandi related to transaction value of importation. One of them was import transaction of EDC machine which should not be categorized as buying-and-selling goods, but it should be categorized as rental goods.

III. Modus Operandi

- Several Customs Value Declaration lower than price actually paid or payable (PAPP)
- There was cost that must be added in order to receive Cost Insurance Freight (CIF) Term
- Six import declarations were not categorized as rental goods according to their rental agreement, but they categorized it as buying-and-selling goods.

IV. Decision

Audit team decided that there were six import declarations in which transaction value could not be accepted as customs value, so that the customs values were counted based on transaction value of identical goods (method 2) and fall-back method (method 6).

CASE IV - Customs Value – Shortage of Royalty Value Declaration

I. Facts of The Case

YIMM Company is a company that assembles and sells spare part of two-wheeled vehicles and categorized as producer importer. This company has done Voluntary Declaration (VD) on their import declaration of spare part royalty according to our regulation (Ministry of Finance Regulation number 67/PMK.04/2016 regarding Voluntary Declaration).

II. Findings

Audit team asked the company to show the agreement of spare part royalty that has been declared through Voluntary Declaration (VD). The agreement stated that the amount of royalty YIMM Company had to pay was 4% of royalty multiplied by total of spare part sales.

III. Modus Operandi

Royalty value that YIMM Company declared through Voluntary Declaration was just 4% royalty multiplied by free on boarding (FOB) value of spare part.

Audit team asked the sales report and actual royalty payment of YIMM Company. The assessment done to those documents showed that there was shortage of royalty that YIMM Company had to pay based on the actual value of sales (total sales) not only based on FOB Value.

IV. Decision

YIMM Company had to pay import duty, tax and fines Rp 2.239.249.000 (Approximately 154,042 USD)



LAO PDR

CASE I - Customs Value

I. Facts of The Case

Company A imports mid size agriculture tractor and its parts.

II. Findings

- With the utilization of Risk Management.
- With the utilization of valuation database to compare the same product declared by other companies.
- PCA Team conducted document audit of tractors imported by Company A to search for the actual value.

III. Modus Operandi

After utilizing the Method 2 of CV for similar product, the tractors declared by Company A were undervalued.

IV. Decision

PCA Team recalculated the additional duty and tax with 30% penalty for the tractors and resulted in duty and tax recovery of 318,349,200 kip (around 37,450 \$).

MALAYSIA



CASE I - SSB Co. Double Invoices

I. Facts of The Case

- 1.1 SSB Co. is a company that imports and supplies dry food/ raw food such as onions, potatoes, jaggery powder, dried chillies and salted vegetables.
- 1.2 These commodities are different in duty rates.

II. Findings

- 2.1 SSB Co. was subjected to a PCA and has been assessed as a high risk importer based on the risk profiling and analysis on the importer performed by the PCA.
- 2.2 A full audit and crosschecks were carried out on documents and accounting records of SSB Co. It was then discovered the existence of two different invoices for the same particular consignment, in which, one invoice was used for Customs declaration purpose, and the other one was for the purpose of making payments.
- 2.3 Inspection of books and records; payment vouchers, debit advice, bank

statement, creditor's and purchase ledgers, verified that the value in the invoice used for declaration to Customs is lower than the value in the invoice for payment purposes.

III. Modus Operandi

- 3.1. Purchase order will be made directly to the exporter.
- 3.2. SSB Co. received the commercial invoice (actual invoice) from the exporter.
- 3.3. The "second" invoice was used for the purpose of Customs clearance.
- 3.4. Payments to exporters using actual invoice via debit advice.

IV. Decision

A bill of demand was issued for MYR200,000.00 (USD49,000.00) and the company was penalised r MYR5,000.00 (USD1,200.00) for committing offences under Sections 133(1)(c) of the Customs Act 1967.

CASE II - ABC METAL MANUFACTURING CO. LTD. (False or incorrect declarations and documents in relation to exportations)

I. Facts of The Case

- 1.1 ABC Metal Manufacturing Co. Ltd ("ABC Co.") is a manufacturer and exporter of various types of metals, including scrap metals.
- 1.2 ABC Co. was investigated upon findings from physical examinations conducted on six containers that were meant to be exported owned by a company related to ABC Co, that is XYZ Metal Industry Co. Ltd. ("XYZ Co.").

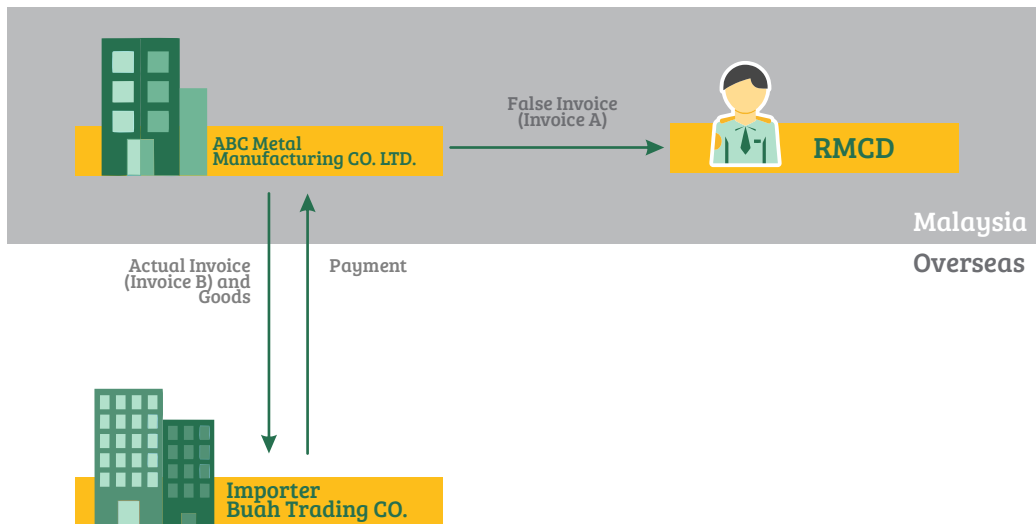
II. Findings

- 2.1 Goods have been shipped for exportation prior to audit, therefore, no physical examinations could be conducted. Auditors, however, have discovered two different sets of sales invoices for the same consignment for exportation. "Invoice A" was used for the purpose of customs declaration. On the other hand, "Invoice B" was given to the foreign buyer. Both invoices have the same reference number and value of goods.

- 2.2 As per Invoice A, ABC Co. has declared the goods as 'aluminum flake' which are subject to export duty of 0%, while the actual goods that have been exported according to Invoice B are 'aluminum scrap used beverage can' that are subject to 10% export duty.
- 2.3 Further examinations on shipping documents and account-related records such as packing list, bill of lading, insurance policy and ledgers revealed that goods exported were as per Invoice B. Some of the documentary evidence were obtained from ABC Co.'s computer system.

III. Modus operandi

- 3.1 Creating dual sales invoices, in which invoice that described goods subject to 10% export duty was issued to the foreign buyer.
- 3.2 For the purpose of declarations and clearance of goods, ABC Co. used invoices that stated goods not subject to export duty.



IV. Decisions

4.1 ABC Co. was penalised for committing an offense of making incorrect declarations and falsifying documents under Section 133(1)© Customs Act 1967.

4.2 A claim of tax disputes of MYR273,000 (USD67,000) was made to ABC Co. for underpayment of export duty.



MYANMAR

CASE I

I. Facts of The Case

1. Company A which is imported furniture and accessories has been selected and conducted by PCA audit team in accordance with the risk assessment and information gathered from MACCS and other sources.
2. Company B informed PCA team that the value of imported goods from Company A are undervalue as well.
3. Most of the goods are imported from Thailand and China. They applied ATIGA Form D and E in order to get customs duty free in some cases.
4. The period of field audit starts from August 2018 for one week.

II. Findings

1. Firstly, PCA Audit Team has collected and assessed the import data of Company A since November 2016.
2. PCA unit discovered that the declared

value was lower than the actual payment to the seller.

3. Secondly, PCA team was conducted an interview with Managing Director of Company A along with his staff.
4. When Company A was examined and discovered by PCA team, PCA team found out that the company was intentionally declared undervaluation in order to avoid paying tax.
5. Shortage of import duties and tax paid over USD 26,000.

III. Modus Operandi

Company A used double invoices for the undervalued declarations of goods.

IV. Decision

The shortage amount of import duties and tax amount USD 26,000 was paid by the importer.

CASE II

I. Facts of The Case

On 25th April 2018, PCA officers went and checked importer's premise. Importer warmly welcomed and prepared separate room for PCA Audit. All of the files and relevant document were in this room. PCA officers verified the figures of imported cargo with concerning documents.

II. Findings

PCA officers checked 48 Import Declarations. Company always imports only one item of engine oil.

Importer submitted relevant documents including price lists of imported item. Auditor found one of the suspected value amount of ID, was different with others IDs. Auditor

considered number of importation times, quantities, payment, etc.. Auditor detail checked ID, contract, invoice, price lists and other related documents. Company explained they got the discounted price to help their customer to reduce the agreed price. But they couldn't show the evidence properly. Auditor did not accept their answer.

III. Modus Operandi

This is a case of under valuation.

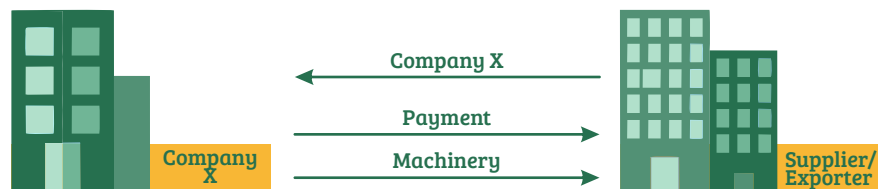
IV. Decision

Auditor calculated the under-value amount and reported to collect total recovered duty of more than USD #22857



PHILLIPINES

CASE - Actual Customs Valuation



I. Facts

- Company X is an importer of Company Y and manufactures it to wiremess, cyclone wire, and nails.
- Company X furnished the exporter/supplier with machinery used in the manufacture of Company X.

II. Modus Operandi & Decisions

Thorough investigation/examination of their book of accounts revealed that there is an assists furnished by Company X to their supplier abroad which significantly reduces the price of the goods being imported or significantly affects its value. If assists is established, transaction value still applies but the value of the assists is added to the price paid or payable. In this case, we were able to establish the value of the assists and make Company X paid the amount of two million and sixty three thousand pesos (Php 2,063,000.00) representing deficiency in duties and taxes including penalties.

SINGAPORE

CASE I - Former director fined S\$550,000 for conspiring with two men to evade duties and GST on 2,700 cartons of beer

I. Facts/Findings

The offender, a former director of company X, pleaded guilty to one charge of engaging in a conspiracy to deal in uncustomed goods with the intent to defraud the Government of customs duty and excise duty.

On 21 August 2014, Singapore Customs conducted an operation and seized the duty-unpaid beer, soft drinks and mineral water. The total duty and GST involved amounted to about S\$125,220.

The offender had also conspired with two other persons, accomplice A and B, to divert into Singapore duty-unpaid beer that had been declared to Singapore Customs for export.

II. Modus Operandi

Prior to August 2014, the offender suggested to accomplice A, who was the director of company Y, to purchase duty-unpaid beer from accomplice B's company Z. The duty-unpaid beer which accomplice A purchased would then be resold at a marked-up price to the offender's company X. The offender's plan was to make it appear that company X had

purchased beer that was duty-paid.

When a consignment of duty-unpaid beer was coming in August 2014, accomplice A followed the offender's instructions to purchase the beer from accomplice B. Instead of sending the container loaded with beer for export, accomplice B arranged to swap the beer with soft drinks and mineral water. The beer was then transported to a local warehouse where accomplice A was the manager.

III. Decisions/Opinions

The offender was sentenced by the State Courts to a fine of S\$550,000 on 5 July 2018. Accomplice A and B were sentenced to court fines of S\$450,000 and S\$900,000 on 24 October 2016 and 26 August 2016 respectively. As accomplice B was unable to pay the fine, he served nine months' jail in default.

Under the Customs Act, any person who is guilty of dealing with dutiable goods with the intention to defraud the Government of any duty and GST will be liable on conviction to a fine of up to 20 times the amount of duty and GST evaded.

Case Photos :



Photo 1: The offender suggested to accomplice A to purchase duty-unpaid beer from accomplice B's company Z and subsequently resell the beer to the offender's company X.



Photo 2: A container of 2,700 cartons of duty-unpaid beer meant for export was swapped with soft drinks and mineral water before it was attempted to be exported out of Singapore. However, the conspiracy was uncovered by Singapore Customs officers.

CASE II - Director of freight forwarding company fined S\$50,000 for affixing incorrect labels on goods and submitting false declarations to Singapore Customs

I. Facts/Findings

Between 2013 and 2014, company X, where the offender was a director, exported 34 shipments of glass fibres and fabrics valued at about S\$4.8 million to Bulgaria, Germany and Turkey, and falsely declaring the country of origin of these goods as Singapore in the export declarations.

They also affixed “Made in Bangladesh” sticker labels on fabrics that originated from China before exporting them from Singapore to Turkey. These activities were done with the offender’s knowledge and consent.

II. Modus Operandi

Falsely declaring the country of origin of goods as Singapore in the export declarations made to Singapore Customs, and affixing “Made in Bangladesh” sticker labels on fabrics to enable their customers in Bulgaria, Germany and Turkey to pay lower tariffs for the goods imported by avoiding the anti-dumping duties which were imposed on goods originating from China.

III. Decisions/Opinions

The offender was sentenced by the State Courts on 26 September 2017 to a fine of S\$50,000, or in default 50 weeks’ imprisonment, for knowingly giving consent to his staff to submit false declarations of the country of origin of goods in the permit applications to Singapore Customs, and affix incorrect trade description on the sticker labels on goods.

Anyone found guilty of making a false declaration under the Regulation of Imports and Exports Act (RIEA) will be liable on conviction to a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding two years, or to both. Anyone found guilty of applying incorrect trade description, as a first offence will be liable on conviction to a fine not exceeding S\$100,000 or 3 times the value of the goods in respect of which the offence was committed, whichever is greater, or imprisonment for a term not exceeding two years, or to both.

THAILAND

CASE I - Failed to declare expenses

I. Facts of Transactions

1. Company I (“auditee”) purchased cosmetics and chemical components (“Goods”) from several companies in country II (“sellers”).
2. Some payments showed on auditee’s transaction history were done without proper definition; some are failed to declare any audit trail.

Extra – PCA unit received several anonymous letters with confidential details of the auditee on overpriced goods. Moreover, we found similar cases by other SMEs with low amount of authorized share capital (approximately THB 1,000,000 or USD 32,000).

II. Findings

Before performing audit, PCA unit officers (“auditor”) gathered the information, such as, complaint about auditee, the price of goods from website in various countries, including website under Thai domain registration (we found the goods are sold internationally on Google) and data of import declaration for comparison. Auditor found that there is significant difference between two groups of aforementioned prices (on websites and on import declarations); mostly 60-70% and it tends to increase based on purchase amount.

PCA unit conducted post clearance audit at company’s premise and found some invalidity on documents, several split payment transactions are unclear defined what for these transactions are. As well as in the copies of bank statement appeared suspicious frequency of debit and credit.

One of auditor interviewed the accounting manager and noted that auditee used to be claimed the shortage amount of tax and compound by the Revenue Department for such expenses; some are failed to present the source of income and expense and their evidences. Unfortunately, we are not able to contact her for more information after the day PCA unit performed audit.

III. Decision/Opinion

The investigation is ongoing; authorized proxy of the auditee (Assistant General manager) refused to provide more evidences.

Moreover, PCA unit submitted the case to Legal Bureau since the auditee commit an offence under section 203 of Customs Act B.E.2560 (2017) for false statement, shall be liable to a fine not exceeding five hundred thousand baht.



VIETNAM

CASE I

I. Facts of the case

Company A is a wine import company and the president of the company is Mr. X who also established a company B outside of Vietnam.

Company B imported wine from Company A and then resold it to Company A.

When Company A declares procedures to import goods, the Company also does not declare the special relationship between Company A and Company B.

II. Findings

PCA conducted research and collected information:

- Compared the declared price of imported goods with similar and same product's prices.
- Compared the declared price of imported goods with the selling price in the exporting country.
- Collected information about Board of

Director of Company B.

- Checked the related documents such as financial statements, accounting records, payment documents related to imported goods of Company A.

III. Modus Operandi

- Used Customs Value Declaration lower than price actually paid in order to reduce payable taxes.
- Did not declare the relationships between companies A and B that affected the customs valuation.
- Payment according to accounting books is not consistent with customs declaration.

IV. Decision

- PCA did not accept and rejected the customs value declared by Company A.
- Redefined the value to collect the remaining tax and penalties with a total amount of nearly VND 50 billion.

CASE II

I. Facts of the case

Company A imported construction materials to create a fixed asset for project of preferential investment for the government.

Imported goods include: Construction materials were declared as components, details for assembly with machinery, equipment and registered in list of duty free import goods to customs administration.

II. Findings

PCA shall be carried out based on the application of risk management

Post clearance audit at premises of customs declarants:

- Inspect technical construction files and documents related to the imported goods of the company;
- Inspect accounting books and documents and payment files according to duration of checking and take over of project;
- Inspect post-clearance physical at factory or project;
- To compare declare contents with accounting books and documents, financial statements, related to documents and actual conditions of imported goods.
- To compare list of duty free import goods registered to customs administration with post-clearance physical and regulations of goods classification.

III. Modus operandi

- Incorrect declaration of HS code and import tax rates of imported goods.
- Incorrect declaration of subjects that are exempted from duty.
- Some items are not components, detail imported for assembly with machinery as declared at the time of customs clearance.

IV. Decision

Company A incorrectly declared code and import tax rates of imported goods. The imported goods above are **INELIGIBLE for tax exemption**. Customs administration made decision to recover the tax of 44.596 billion VND (about 1.962 million USD).

Regulations:

- Imports as fixed assets of an entity eligible for investment incentives as prescribed by regulations of law on investment, including:
- Machinery and equipment; components, parts, spare parts for assembly or operation of machinery and equipment; raw materials for manufacture of machinery and equipment, components, parts, or spare parts of machinery and equipment;
- Special-use vehicles in a technological line directly used for a manufacture project;
- Building materials that cannot be domestically produced.



SURVEYS



SURVEY I

SURVEY ON LEGISLATION AND REGULATION REGARDING PCA

The surveys below are continuance of surveys that were published in 9th Edition of PCA Bulletin Year 2018.

COUNTRY : PHILIPPINES

1.The legal framework regarding the application of PCA (List all of the respective regulation and legislation regarding PCA)

Republic Act No. 10863: CUSTOMS MODERNIZATION AND TARIFF ACT (CMTA)

On demand of the proper officer of customs, the importer or exporter of any goods, or his agent, shall produce to such officer all invoices, bill of lading, certificates of origin or of analysis and any other documents, which such officer may require to test the accuracy of any declaration made by such importer to any officer of customs.

1. Title X – Post Clearance Audit

- a. Section 1000 – Audit and Examination of Records
- b. Section 1001 – Scope of the Audit
- c. Section 1002 – Access to Records
- d. Section 1003 – Requirement to Keep Records

e. Section 1004 – Power of the Commissioner to Obtain Information and Issue Summons

f. Section 1005 – Failure to Pay Correct Duties and Taxes on Imported Goods

g. Section 1006 – Records to be Kept by the Bureau

2. Section 114 – Right of Appeal, Forms and Ground

3. Section 430 – Period of Limitation

4. Section 1104 – Administrative and Judicial Appeals

5. Section 1132 – Remedies for the Collection of Duties, Taxes, Fines, Surcharges, Interests, and other Charges

6. Section 1133 – Constructive Dstraint of the Property

7. Section 1134 – Summary Remedies

8. Section 1427 – Failure to Keep Importation Records and Full Access to Customs Officers

2.The process of PCA

(Please explain the process of PCA starting from the planning, conducting and reporting)

The complete process of the PCA is included in the proposed Customs Administrative Order (CAO) which is already submitted to higher authorities for approval.

3. The follow-up of PCA

(Please explain of the follow-up action after the report of PCA)

Collection of duties and taxes

ADDITIONAL QUESTIONS

4. a. The legal framework regarding maximum period after importation that Customs (PCA) could legally demand underpaid duty and the maximum period itself

b. The differences in maximum period after importation that Customs (PCA) could legally demand underpaid duty, if any, for example due to the differences in PCA's scope of examination

CMTA

Section 430. Period of Limitation – In the absence of fraud and when the goods have been finally assessed and released, the assessment shall be conclusive upon all parties three (3) years from the date of final payment of duties and taxes, or upon completion of the post clearance audit.

5.The period of of auditees' keeping books, records and documents, including electronic data based on customs laws and regulations

CMTA

Section 1003. Requirement to Keep Records –

- A. All importers are required to keep at their principal place of business, in the manner prescribed by regulation to be issued by the Commissioner and for a period of three (3) years from the date of final payment of duties and taxes or customs clearance, as the case may be, all records pertaining to the ordinary course of business and to any activity or information contained in the records required by this title in connection with any such activity.

For purposes of the post clearance audit and Section 1005 of this Act, the term importer shall include the following:

1. Importer-of-record or consignee, owner or declarant, or a party who:
 - i. Imports goods into the Philippines or withdraws such goods into the Philippine customs territory for consumption or warehousing, files a claim for refund or drawback: or transports or stores such goods carried or held under security; or
 - ii. Knowingly causes the importation or transportation or storage of imported goods referred to above, or the filing of refund or drawback claim.
2. An agent of any party described in paragraph (1); or
3. A person whose activities require the filing of a goods declaration.

A person ordering imported goods from a local importer or supplier in a domestic transaction shall be exempted from the requirements imposed by this section unless:

1. The terms or conditions of the importation are controlled by the person placing the order; or
2. The circumstances and nature of the relationship between the person placing the order and the importer or supplier are such that the former may be considered as the beneficial or true owner of the imported goods; or
3. The person placing the order had prior knowledge that they will be used in the manufacture or production of the imported goods.

- B. All parties engaged in customs clearance and processing are required to keep at their principal place of business, in the manner prescribed by regulations issued by the Commissioner and for a period of three (3) years from the date of filing of the goods declaration, copies of the abovementioned records covering the transactions handled.

- C. Locators or persons authorized to bring imported goods into free zones, such as the special economic zones and free ports, are required to keep subject-records of all its activities, including in whole or in part, records on imported goods withdrawn from said zones into the customs territory for a period of (3) years from the date of filing of the goods declaration.

Failure to keep the records required by this Act shall constitute a waiver of this right to contest the results of this audit based on records kept by the Bureau.

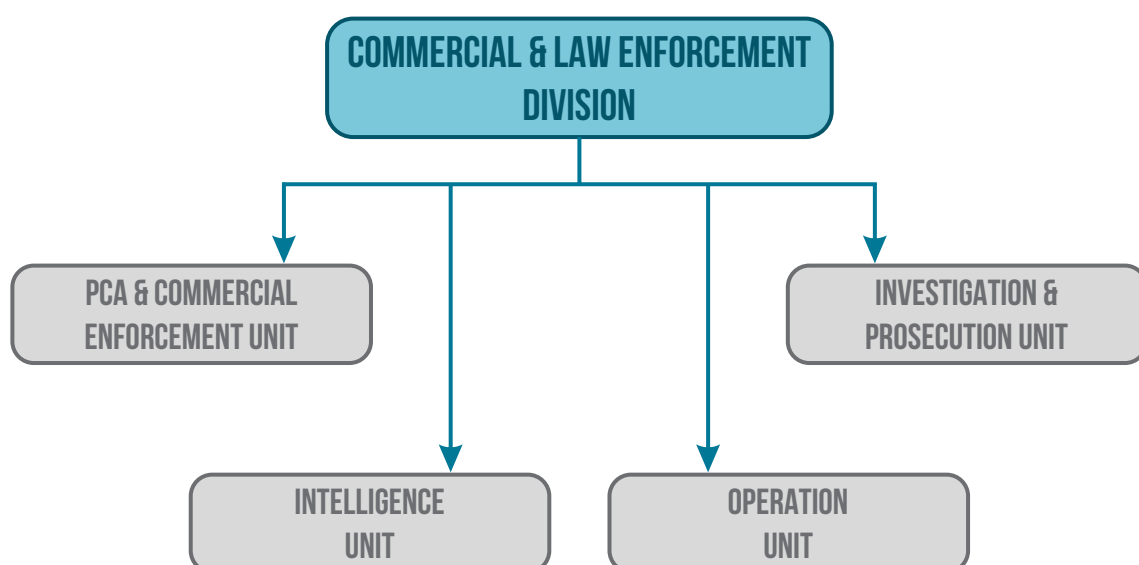
SURVEY II

SURVEY ON THE ORGANIZATIONAL AND ADMINISTRATIVE STRUCTURES FOR THE POST CLEARANCE AUDIT

The surveys below are continuance of surveys that were published in 9th Edition of PCA Bulletin Year 2018.

COUNTRY : BRUNEI DARUSSALAM

1. The organizational and administrative structures for the Post Clearance Audit
(Put the diagram for the Post Clearance Audit)



**effective 1st July 2017*

2. Brief description about the function of each part in the diagram above

PCA Unit:

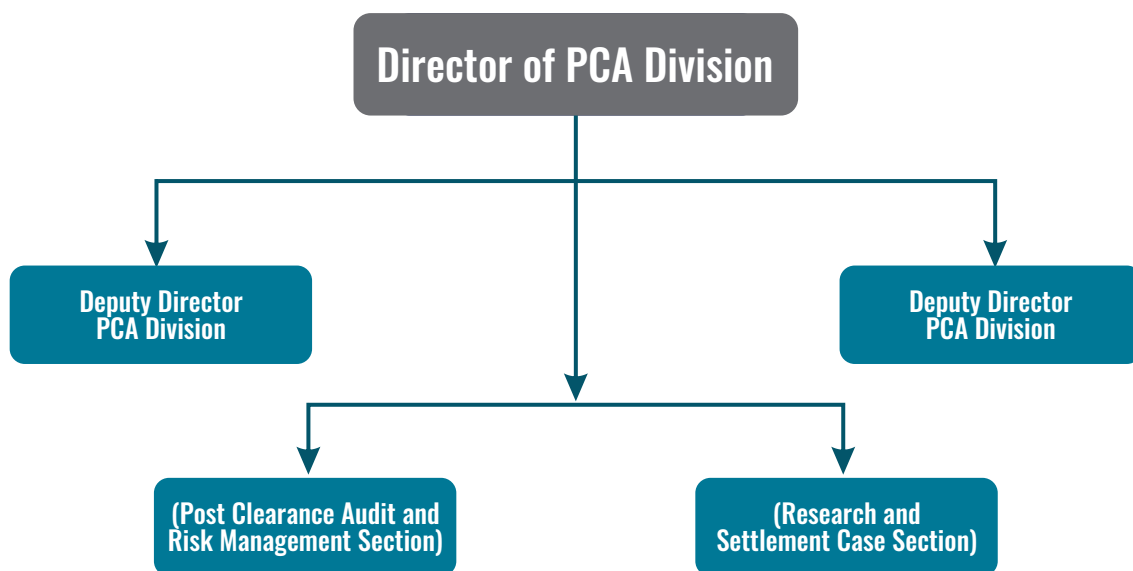
- 1) to conduct audits and examinations of documents on selected importers and companies related to the import/export of goods;
- 2) to detect duties evasion and frauds (to safeguard Customs revenue);
- 3) to verify accuracy and authenticity of Customs declarations in the past period.

CE Unit:

- 1) to conduct audits on focused importers and companies on-site examination of documentations.
- 2) to assess and do a survey on reported or targeted importers and companies.
- 3) to enhance compliance of importers and companies with Customs laws and regulations

COUNTRY : LAO PDR

1.The organizational and administrative structures for the Post Clearance Audit
(Put the diagram for the Post Clearance Audit)



2. Brief description about the function of each part in the above diagram

Post Clearance Audit and Risk Management Section.

1. Conduct detailed examination of data for PCA of different companies operating import-export of goods and transit business throughout the country;
2. Collect, compile the customs brokers` data in order to study, analyze, diagnose and develop database for PCA and determine the qualification for customs brokers in order to classify customs risk management score;
3. Manage, monitor and inspect Customs-Taxes fee and other obligations which are linked to the results of PCA so that proper payment can be made timely in full according to the laws and regulations;
4. Consider and impose measures against those who do not provide cooperation or those who do not settle pending Customs-Taxes amount and other obligations which are not balanced according to the findings from the audit;
5. Prepare customs offense case and submit the case file to prosecutor for claiming at court according to the laws and regulations;

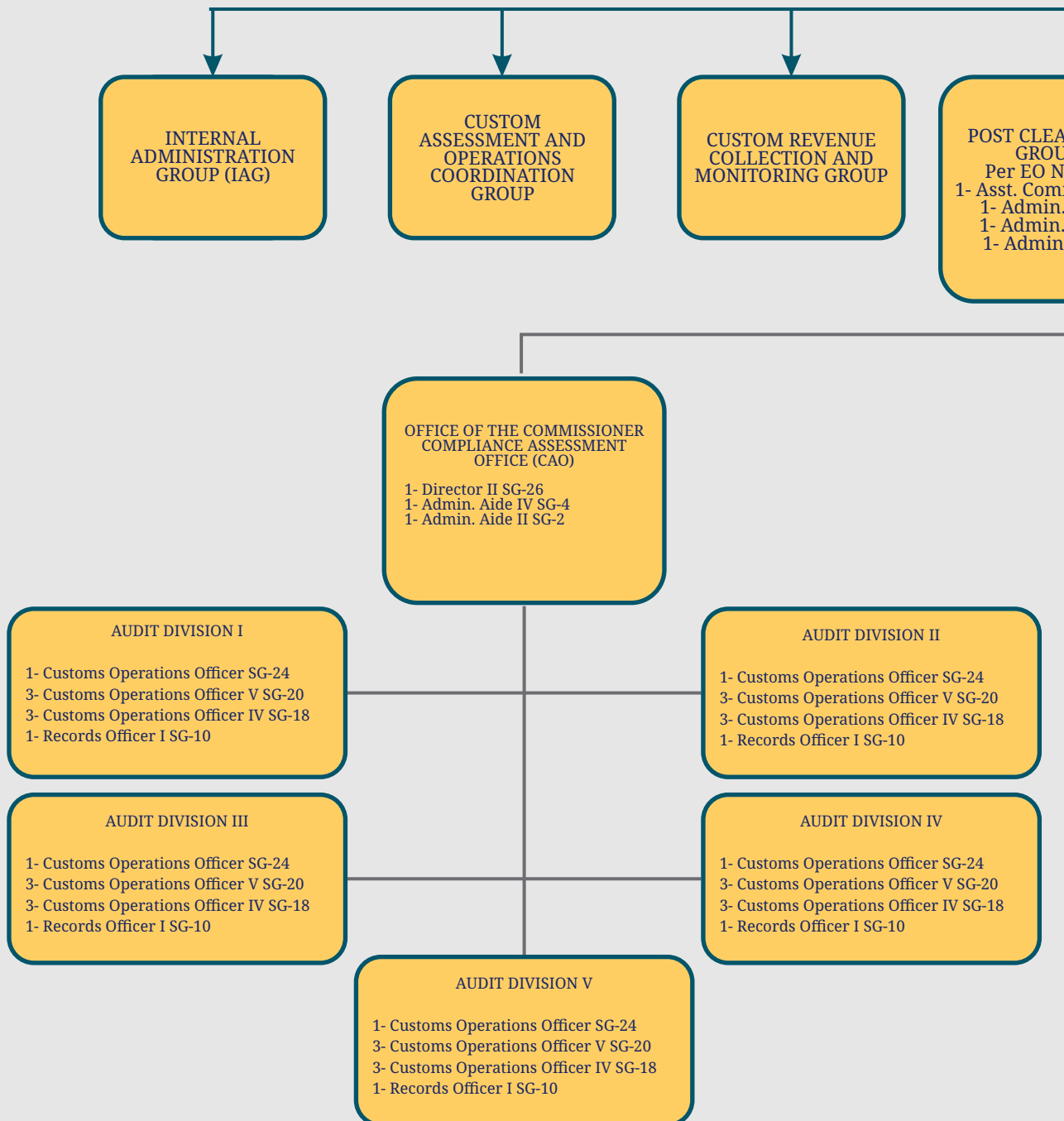
Research and Settlement Case Section.

1. Consolidate statistic and customs offense in scope of its responsibility and send to Anti-Smuggling Division regularly;
2. Manage, monitor and inspect and providing feedbacks concerning Post Clearance Audit of customs technical offices under the management of Customs Management Office throughout the country;
3. Collaborate with other Divisions of Customs Department, Customs Management Office and Customs Border Checkpoints in performing of their assignment so that they will be unified in enforcing the laws and regulations effectively;
4. Study the proposals by Customs Management Office and Customs Border Checkpoints, relating to the works and responsibilities in order to report to Customs Department for consideration;
5. Summarize and compile comprehensive Customs activities daily, weekly, monthly, quarterly and annually throughout the country in order to report to Customs Department;

COUNTRY : PHILLIPINES

1.The organizational and administrative structures for the Post Clearance Audit
(Put the diagram for the Post Clearance Audit)

COMMISSION
ISIDRO



CHIEF OF CUSTOMS
S LAPENA

FINANCE AUDIT
OFFICE (PCAG)
Law No. 46, s. 2017
Commissioner SG-28
Aide VI SG-6
Aide III SG-3
Aide II SG-2

ENFORCEMENT
GROUP (EG)

MANAGEMENT
INFORMATION
SYSTEM
TECHNOLOGY GROUP

INTELLIGENCE
GROUP (IG)

OFFICE OF THE COMMISSIONER
TRADE INFORMATION AND RISK
ANALYSIS OFFICE (TIRAO)

1- Director II SG-26
1- Admin. Aide IV SG-4
1- Admin. Aide II SG-2

TRADE INFORMATION ANALYSIS
DIVISION I

1- Customs Operations Officer SG-24
3- Customs Operations Officer V SG-20
3- Customs Operations Officer IV SG-18
1- Records Officer I SG-10
1-Admin. Aide VI SG-6

TRADE INFORMATION ANALYSIS
DIVISION II

1- Customs Operations Officer SG-24
3- Customs Operations Officer V SG-20
3- Customs Operations Officer IV SG-18
1- Records Officer I SG-10
1-Admin. Aide VI SG-6

2. Brief description about the function of each part in the diagram above

Functions of PCAG – The PCAG is mandated to conduct, within three (3) years from the date of final payment of duties and taxes or customs clearance, an audit examination, inspection, verification, and investigation of records pertaining to any goods declaration, which shall include all statements, declarations, documents, and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the importer for duties, taxes and other charges, including any fine or penalty.

The TIRAO shall perform the following functions:

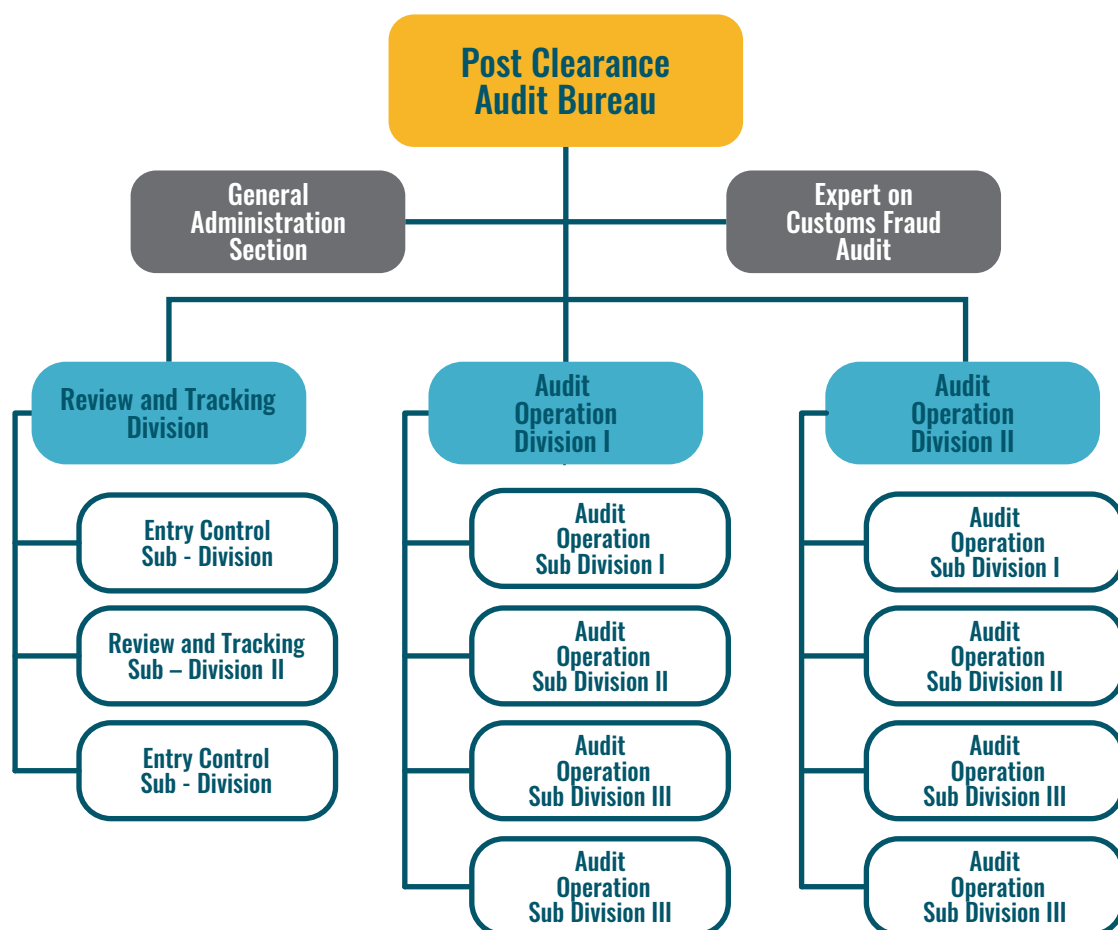
- a. Review available trade data to determine compliance of industry (or other means of data groupings) and set benchmarks for the purpose of developing an audit program for the Commissioner's approval;
- b. In coordination with the Management Information System and Technology Group (MISTG), develop a computer-aided risk-based management system, the parameters of which are to be based on objective and quantifiable data, subject to the approval of the Secretary of Finance upon recommendation of the Commissioner, for use in the profiling and identification of potential priority candidates based on the approved audit program;
- c. Recommend for approval of the Commissioner of Customs the potential priority audit candidates;
- d. Develop policies, guidelines, manuals and standard operating procedures relating to the audit process; and
- e. Perform such other functions as may be necessary or incidental in carrying into effect the provisions of this Order, and as may be provided by law.

The CAO shall perform the following functions:

- a. Prepare the audit work plan, scope and approach for the approved priority audit candidates;
- b. Conduct the audit examination, inspection, verification or investigation of records subject to applicable laws, approved policies, guidelines, manuals and standard operating procedures; and
- c. Prepare and submit the required reports on audit findings and recommendations to the Commissioner of Customs for approval;
- d. Establish and maintain a customs compliance program; and
- e. Perform such other functions as may be necessary or incidental in carrying effect the provisions of this Order, and as may be provided by law.

COUNTRY : THAILAND

1.The organizational and administrative structures for the Post Clearance Audit
(Put the diagram for the Post Clearance Audit)



2. Brief description about the function of each part in the above diagram

Post Clearance Audit Bureau is responsible for intelligence activities and field audits whether tariff nomenclature, tax and duty incentives and import/export formalities applied are compliant with relevant laws and regulations; maintaining post clearance documents and conducting post clearance review; auditing records, accounts, and documents on imports and exports at the importer's / exporter's premises or related parties. It composes of 3 divisions, 1 sub-division and 1 expert on Customs Fraud Audit.

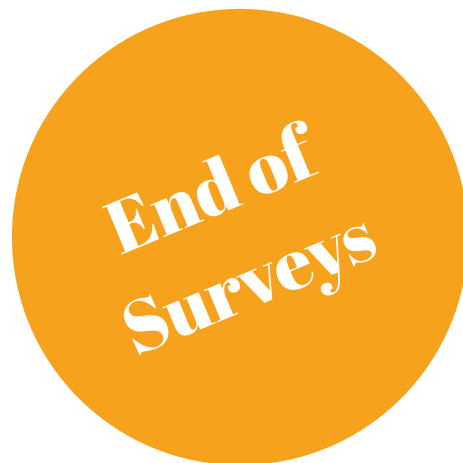
Expert on Customs Fraud Audit gives advice for officers on the tasks both auditing and legal.

General Administrative Sub-division is responsible for correspondence/general administrative works, PR and dissemination of Bureau's performance, coordination and provide general services, forming projects in accordance with strategy, manage and develop human resources,

budgeting and office supply control and carry out other tasks as assigned.

Review and Tracking Division is responsible for planning and specify guidelines or measures on tracking tax collection, reviewing declarations after customs clearance, duty and tax reassessment on deficit tax, store import/export declaration and carry out other tasks as assigned.

Audit Operation Division I,II are responsible for planning and specify guidelines or measures on auditing tax collection, pre-audit Survey, planning, auditing records accounting books, record, and documents, verify if tariff classification tariff role have been correct, and all requirements to qualify for tax incentives have been completed and carry out other tasks as assigned.





ARTICLE AND GALLERY



NATIONAL WORKSHOP ON POST CLEARANCE AUDIT FOR MYANMAR CUSTOMS OFFICIALS

14 - 16 AUGUST 2018



The workshop was organized by Myanmar Customs Department and was held at Myanmar Customs Headquarter in Yangon, Myanmar on 14 – 16 August 2018. Indonesia Customs as ASEAN Country Coordinator for Strategic Planning of Customs Development 8 on Post Clearance Audit (SPCD 8 on PCA) sent her PCA experts as resource persons for this workshop.

The workshop was attended by 33 participants from Myanmar Customs Officials and was opened by The Director General of Myanmar Customs Dept, Mr Kyat Htin. Mr Kyat Htin, in his speech, delivered his gratitude to Indonesia Customs for the support of the National Workshop on PCA enforcement. Myanmar Customs established PCA on 10th October 2017 and now is on the first stage of PCA development. Consequently, there are many things that Myanmar Customs have to prepare and learn. Besides, he hoped that the workshop would be useful for Myanmar Customs Officials as the officials can actively discuss with Indonesia PCA experts.

Next, was continued by the remarks from Indonesia Customs representative. Delivered in his speech, that, it was an honour for Indonesia Customs to be resource

persons of the workshop. He also said that being resource persons doesn't mean PCA in Indonesia Customs is more excellent than other ASEAN states. Indonesia Customs had applied PCA earlier than others and is really pleased to share knowledge as well as experience to Myanmar Customs Department Officers.

For three days, these experts and participants discussed several points of substances such as:

1. Review to Revenue Package
2. Background to PCA and Legal and Operational Framework on PCA
3. Strategic Planning for PCA
4. Auditor Standard
5. Risk Management and Liaison
6. Implementation on PCA
7. Preparation of Audit and Understanding Trader Business
8. Audit Report, Evaluation and Follow Up
- 9.2 PCA Cases Study about royalty and misclassification



In the wash-up session, discussed whether need and expectation of workshop participant had been achieved or not. Indonesia Customs asked some of workshop participants to tell their opinion about the workshop. Some of participants said that resource persons and the materials that they bring are good. They also said that the workshop was really good for Myanmar PCA development and it could increase participant's knowledge and experience regarding PCA practice.

The workshop was ended by Director General of Myanmar Customs Department, Mr. Kyat Htin. In his speech, he conveyed his gratitude to representatives of Indonesia Customs for the support of National Workshop on PCA enforcement. The workshop was efficient for PCA is not only as

required procedure, but also as important tools to international customs practice. He hoped that Myanmar Customs Officials can get new knowledge from the experiences that had been shared for PCA development in the future.

Closing speech was delivered by Indonesia Customs representative. At the closing speech, the representative delivered his gratitude to Myanmar Customs for allowing Indonesia Customs shared knowledge and experiences through the workshop and hoped that what had been shared are beneficial for Myanmar PCA development. Moreover, he appreciated all of participants for being active during discussion and thanked committee for the hard work in organizing the workshop.



24th CECWG

Singapore , 28-30 August 2018





Bandar Seri Begawan, Brunei Darussalam
26 - 28 February 2019

25th CECWG



ASEAN-US ABC WORKSHOP

**FORGING AN EFFECTIVE PARTNERSHIP TO
TACKLE ILLICIT TRADE & COUNTERFEITS**

**Bandar Seri Begawan, Brunei Darussalam
25 February 2019**

TRANSFER PRICING, QUO VADIS?

Author : Heru Hardjanto Adi Pradopo
(Senior PCA practitioner-Directorate Customs and Excise Audit-Indonesia)

The goals of transfer pricing done by both local and multinational companies are as follows:

- a) As a means to achieve the company's goals and other goals.
- b) To secure the competitiveness of branches or subsidiaries of the company and penetrate the market in an effort to achieve competitive advantage.
- c) As a means of controlling the cash flow of branches/subsidiaries.
- d) As a tool to control the risk arising from foreign exchange rate, in an effort to reduce monetary risk.
- e) To monitor the performance of subsidiaries and ways to achieve goals between the managers of subsidiaries and the parent companies.
- f) In multinational companies, transfer pricing is used to minimize taxes and duties to pay issued throughout the world.
- g) As a way to avoid interference by foreign governments.¹

A **special relationship** between a corporate taxpayer can occur due to the ownership or control of share capital by other entities in a certain percentage (in Indonesia, 25% or more) or between several entities 25% or more shares (in Indonesia) owned by an entity. This is slightly different from the terminology of Interrelated Entities in customs arrangements in several countries.

Customs regulations determine customs value in calculating import duty, in which there is a number of transaction value requirements to be accepted as customs value, with the conditions that there is no special relationship between the sellers and the buyers that can affect the pricing of the goods. In the event of the import of goods originating from transactions between related parties, the transaction value of important goods can be determined as customs value providing that the relationship does not affect the price.

To determine whether the relationship affects the price of goods or not can be done in 2 (two) ways, namely:

1) Research on circumstances surrounding the sales

Research on circumstances surrounding the sales is directed to documents related to transactions. In order to find out whether the relationship between the seller and the buyer (importer) influences the price, it is necessary to do research on: all aspects of transaction/importation, matters related to the procedure of sellers and buyers regulating trade relations (commercial relations) and how sales prices are settled.

Indications that show that the relationship between the seller and the buyer does not affect the price, among others, is that both parties conduct the sale and purchase transaction in the same manner as the purchase

transactions normally carried out by unrelated parties. This indication can be seen from the results of research on circumstances surrounding the sales, if the findings show: (i) the sales price is determined based on procedures that are consistent with the procedures for setting sales prices that normally occur in the industry concerned (pricing practices); or (ii) the selling price includes all costs plus the average profit of the company in question for one year. In the case that the conditions in points i and ii above are met, the relationship between the seller and the buyer does not affect the price.

2) Comparison with the test value

The test value means: (if necessary go to article VII GATT, or rules about customs valuation)

- a) Transaction value of identical goods exported into Customs Areas originating from sales between sellers and buyers that are unrelated;
- b) Customs Value of identical goods determined based on the deductive method; or
- c) Customs value of identical goods determined based on computed methods.

Test Value used for comparison to determine whether the relationship between the seller and the buyer affects the price or not, must meet the following requirements:

- a) The value of the transaction of identical goods with the bill of lading or airway bill document having the same date or within 30 (thirty) days before or after the date of the bill of lading or airway bill of the imported goods being valued;
- b) Customs value of identical goods determined based on the Deductive Method, the date of sale of identical or similar goods in the Customs Area is the same or within 30 (thirty) days before or after the date of notification of customs import of imported goods being valued;
- c) Customs value of identical goods that are determined based on the Computed Method, the date of import of identical or similar goods is the same or within 30 (thirty) days before or after the date of notification of imported goods being valued.

To find out whether the relationship between the seller and the buyer affects the price of the goods or not, a comparison is made between the customs value notified in the import document and the Test Value. In case the results of the comparison show:

- a) If the customs value notified in the import document shows:
 - lower than 5%; (In Indonesia regulations)
 - lower by 5% (in Indonesia regulation)
 - same; or
 - greater than

¹Md. Nur-e-Alam Siddique¹, Alim Al Ayub Ahmed, "Congruence of Competitive Advantage and Transfer Pricing: A Study on Selected MNCs Operating in Bangladesh" in Asian Accounting and Auditing Advancement, Volume 5, No. 2 (2015), Asian Business Consortium.

the customs value of identical goods stated in the Test Value, the relationship between the seller and the buyer is deemed not to affect the price.

- b) If the Customs Value notified the difference more than 5% (In Indonesia Regulations) below the Customs Value of identical goods stated in the Test Value, the relationship between the seller and the buyer is deemed to affect the price. The customs value for the import document is determined based on the value of identical goods transactions up to the fallback method that is applied according to the hierarchy of its use.

Comparison using Test Value as shown at the two points above should take into account the differences that occur, including:

- (i) level of trade;
- (ii) quantity level;
- (iii) added costs;
- (iv) costs incurred by the seller in the selling price in the event that the seller and the buyer are unrelated; and
- (v) costs not included by the seller in the selling price in the event that the seller and the buyer are related.

The principle differences found when viewed from the perspective of tax optimization purposes of pricing for customs valuation purposes and for transfer pricing purposes trigger opposing behaviors, for example taxpayers want to obtain low import values for imported products in order to reduce the amount of import duty based on transaction value. For the purpose of transfer pricing, if the goal is to reduce taxable income as a whole, this will encourage the determination of high prices for imported products, which is included into cost of goods sold, thereby reducing taxable profits and income generated from product purchases.

In the latest WCO guide (2018), it is stated that for the purpose of transfer pricing, customs authorities are encouraged to consider studying transfer pricing made by taxpayers in examining transactions between related parties

Relationship between Customs Value and Transfer Pricing

In the 45th meeting of the WCO Technical Committee on Customs Valuation attended by 64 WCO member countries, WTO and OECD delegates, several agendas were discussed, one of which was specific technical questions submitted by WCO member countries, the People's Republic of China (PRC)., Ecuador, Uruguay and Mauritius as follows:

- (1) Related party transactions under the Agreement on Implementation of Article VII on the General Agreement on Tariffs and Trade 1994 (hereafter referred to as Agreement) and Transfer Pricing – case based on resale price method example:: submitted by the PRC;
- (2) Examining the circumstances of the sales under

the provisions of Article 1.2 (a) - goods produced in different countries: submitted by Ecuador;

- (3) Use of Transfer Pricing documentation to examine related party transactions according to Article 1.2 (a) of the Agreement: submitted by Uruguay; and
- (4) Valuation of imported goods purchased in “Flash sales”: submitted by Mauritius.

Of the four questions, the technical committee agreed to continue the ratification or discussion on the questions from China, Ecuador and Mauritius, while the questions from Uruguay were agreed to be included in the Part III of the Conspectus of Technical Valuation Question.

Modes of Tax Avoidance with the Transfer Pricing Scheme

The OECD transfer Pricing guidelines details 5 method in transfer pricing, in term of “*arm's length principle*”. Comparable Uncontrolled Price Method; Resale Price Method; Cost Plus Method; Transactional Net Margin Method and Transactional Profit Split Method.

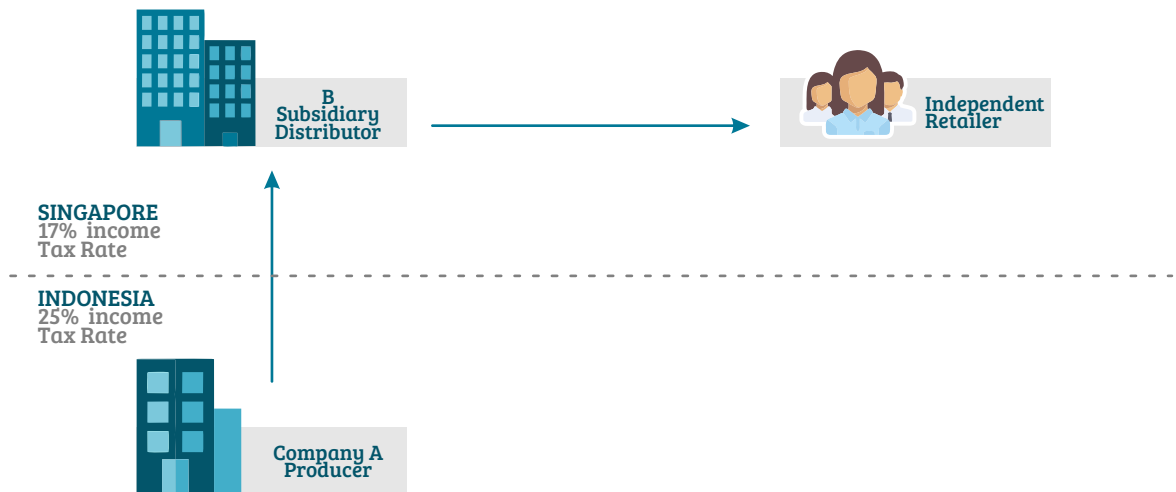
Transfer Pricing can result in the transfer of income or the basis for imposing taxes and/ or duties from one taxpayer to another taxpayer, which can be manipulated to reduce the total amount of tax payable on taxpayers who have a special relationship. Transfer Pricing can be done by artificially shifting income or costs. Such practices can occur in:

- a) Sales Price;
- b) Purchase Price
- c) Allocation of administrative expenses;
- d) Interest imposed on the shareholder loan;
- e) Payment of commissions, licenses, franchises, leases, royalties, compensation for management services, compensation for technical services, and compensation for other services.
- f) Purchase of company assets by shareholders (owners) or parties that have special relationships that are lower than market prices.
- g) Sales to foreign parties through third parties that lack/do not have business substance (for example: dummy company, letter box company or re invoicing center);
- h) Sale or purchase of shares.

1. Reducing Sales Values (Case in Indonesia)

The method of reducing sales values are done by companies in Indonesia who act as the seller. This method is carried out when the subsidiary as a buyer is in a country with a tax rate lower than that in Indonesia.

For example: Company A is a bag manufacturer in Indonesia that sells a number of bags to B, a subsidiary, acting as a distributor in Singapore. B sells the bag to retailers (independent parties) in Singapore. The Income tax in Indonesia is 25%, while in Singapore 17%.

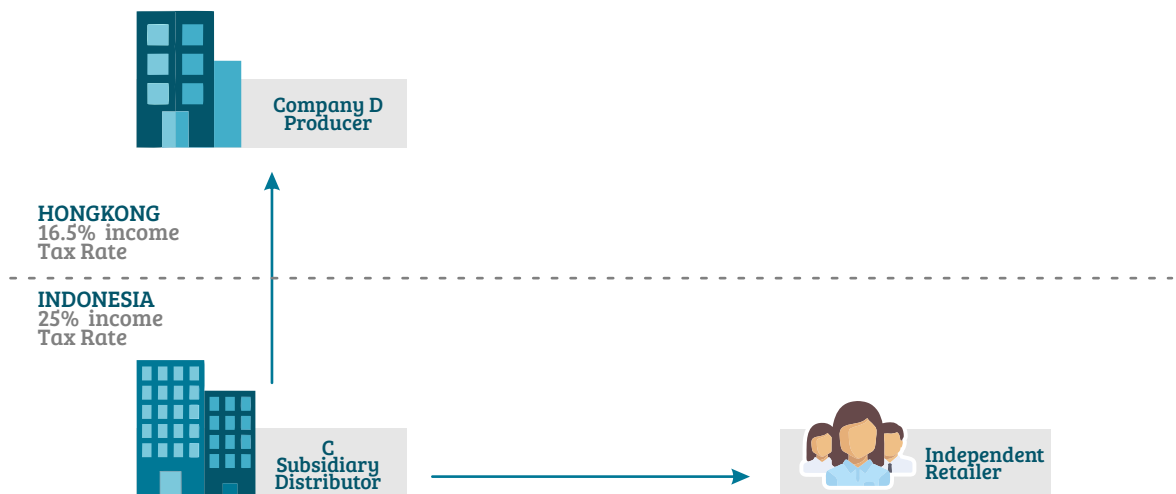


In this case, Company A deliberately reduces the selling price when selling the goods to B. Thus, the profit from the sale of the bags will shift to B in Singapore. The Parent Company gives up most of its profits to be taxed in Singapore because Singapore's tax rate (17%) is lower than that in Indonesia (25%).

2. Increasing Purchase Values (case in Indonesia)

The method of increasing the purchase values is done by companies in Indonesia that act as the buyers. This method is carried out when the subsidiary acting as the seller is located in a country with a lower tax rate than that in Indonesia.

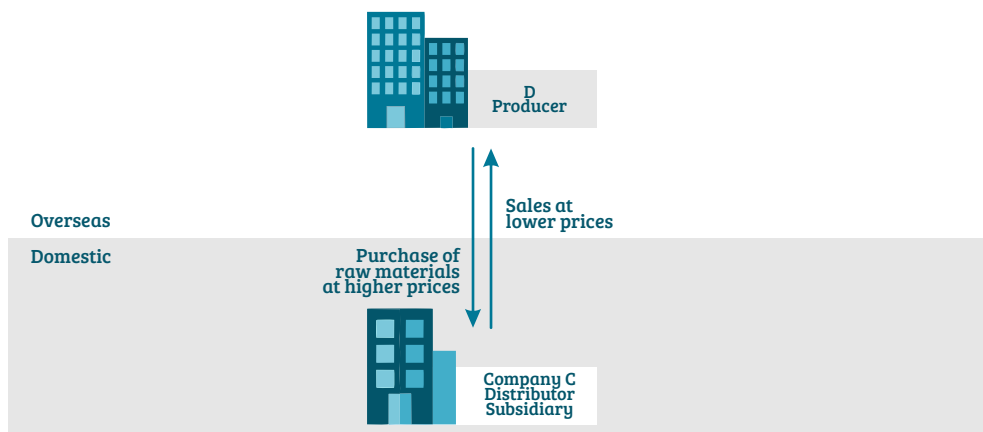
For example: Company C as an electronic goods distributor in Indonesia buys a number of electronic goods from D, a subsidiary in Hong Kong. Company C sells the electronic goods to retailers (independent parties) in Indonesia. The Income Tax in Indonesia is 25%, while in Hong Kong is 16.5%.



In this case, Company C deliberately increases the purchase price when buying from D (Hongkong). Thus, the profits from bag sales will shift to D in Hong Kong. The Parent Company gives up most of its profits to be taxed in Hong Kong because the Hong Kong tax rate (16,5%) is lower than that in Indonesia (25%).

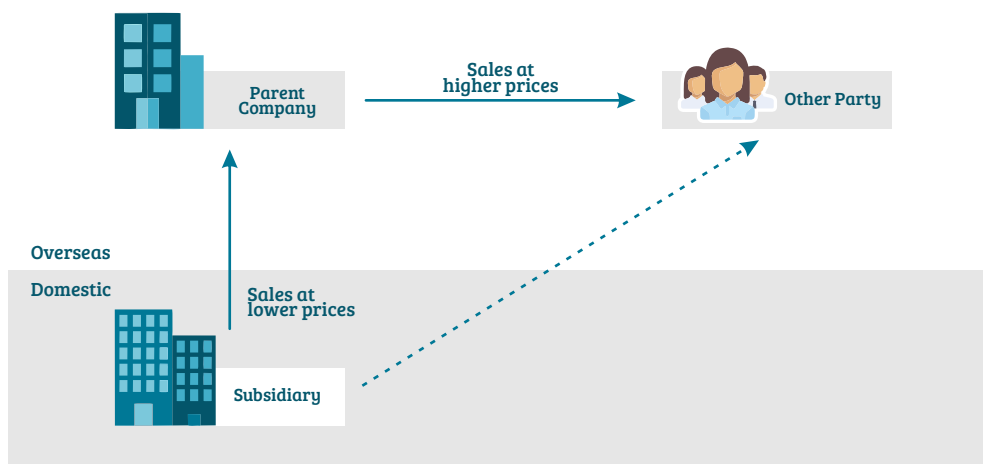
3. Increasing the Purchases and Reducing Sales Values (case in Indonesia)

The method of increasing the sales and reducing the purchases values, done by buying raw materials from parent company abroad at high prices to be processed into finished goods. Then, the finished goods are sold back to the parent company at low prices.



Purchasing raw materials at high prices results in higher costs being deducted as tax deductible, sales of finished goods at lower prices result in smaller taxable income, so that eventually the tax paid in Indonesia becomes smaller.

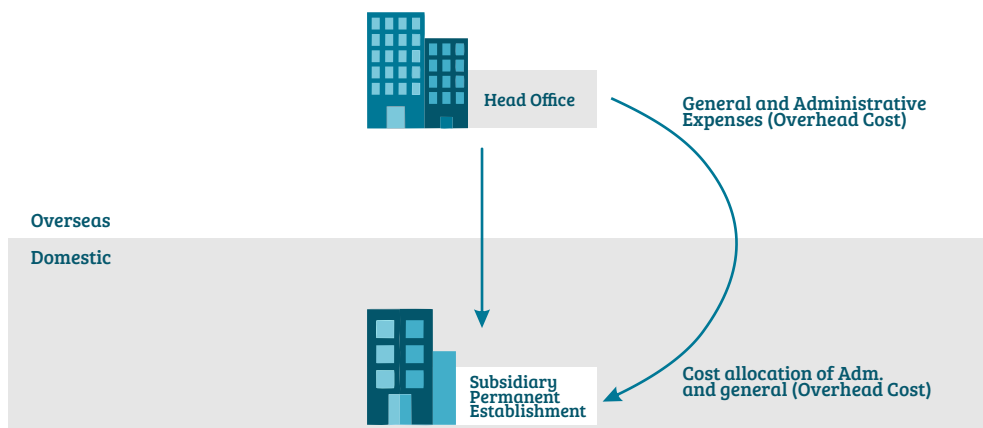
Another alternative to transfer pricing is to sell goods to other parties through the parent company abroad. Even though in reality, goods are directly sent from the company in Indonesia to other parties, but it is done in such a way as if the goods were sold first to the parent company, then the parent company sell them to other parties.



By making sales to the parent company at low prices, the tax imposed in Indonesia becomes lower.

4. Allocation of General and Administrative Expenses (Overhead Cost)

The method of allocation of administrative and general expenses (overhead costs) is usually carried out by BUT (Permanent Establishment). In accordance with the provisions of Income Tax Regulations, the administrative expenses of overseas headquarter are permitted to be charged as a tax deduction for Permanent Establishment in Indonesia²

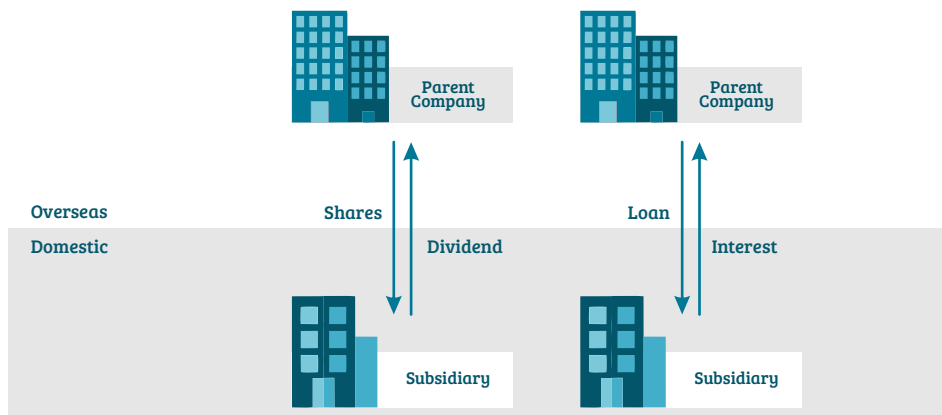


²Article 5 Paragraph (3) Indonesian Law on Income Tax

The Head Office seeks to allocate these costs as much as possible to reduce the tax paid in Indonesia. The reason for the allocation of costs is because these costs are related to businesses or activities of Permanent Establishment in Indonesia. It is not easy for tax authorities in Indonesia to verify the accuracy of these costs because they incurred overseas.

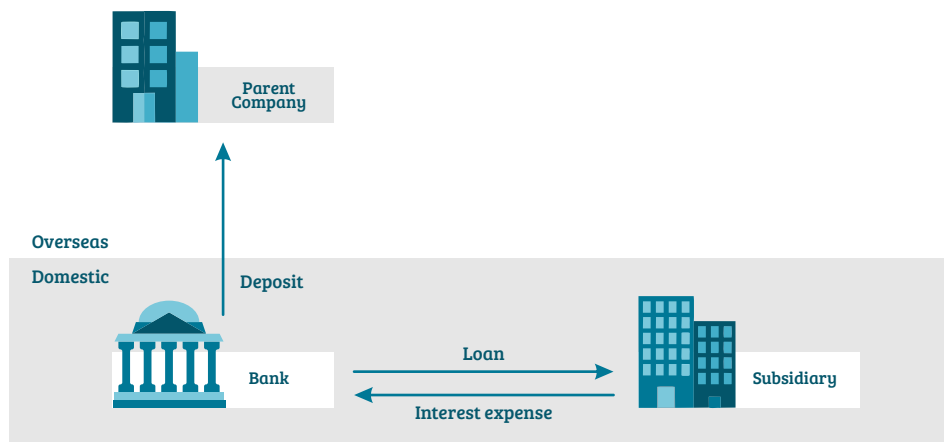
5. Shareholder Loans

Another type of transfer pricing is to conduct thin capitalization, namely the establishment of a capital structure in which the amount of debt is far greater than that of the stock. This thin capitalization is interesting because the tax provisions allow payment of interest as a tax deduction, while dividend payments cannot be tax deductions.



To reduce the tax burden on subsidiaries, parent companies tend to provide loans (and charge interest) rather than adding stock deposits.

Tax provisions govern the limitation of the ratio of debt and capital³, so that the tax authority does not detect the loan, the tax payer modifies the loan distribution scheme through a third party, often referred to as back to back loan.



In back to back loan, the parent company located overseas uses third parties, banks domiciled in Indonesia, to provide loans to its subsidiaries. The loan distribution is done through banks so that the lending seems to be normal. This is done through an agreement between the parent company and the banks in Indonesia by charging interest at the agreed rate. In this scheme, banks do not suffer any loss because they still receive compensation from the margin between loan interest income and deposit interest expense, even though the amount is small.

6. Royalty Payment

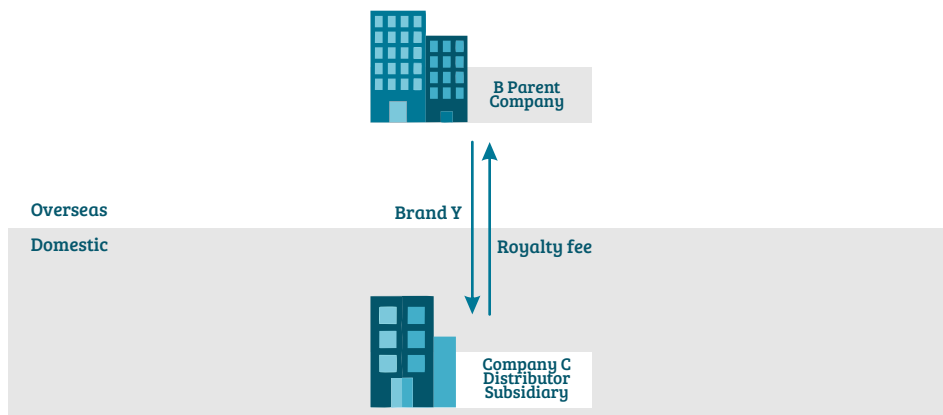
The transfer pricing scheme for tax avoidance can be in the form of paying royalties to the parent company which is actually not necessary.⁴ The following is the illustration of such practice.

Company A is a beverage manufacturer with the brand "X". The drink with this brand is very well-known in Indonesia. B is a multinational company domiciled in a foreign country engaged in food and beverage. The food and drinks produced by B use the brand "Y". Although this brand is known in the international market, it is not widely known in the local market in Indonesia.

³Article 18 Paragraph (1) Income Tax Law

⁴Ning Rahayu, Tax Avoidance in the Subsidiary Company (PT PMA) in Indonesia: An Anti-Tax Avoidance Policy Review. University of Indonesia Doctoral Dissertation, 2008.

Then, B acquires Company A, and after the acquisition process, a policy is made stating that every beverage produced by Company A, besides listing the brand X, should also include the trademark Y in the form of a logo Y. For the Y logo, Company A must pay royalty to B.



Payment of the royalty is charged as a cost in calculating taxes. The royalty payment is actually unnecessary, because the actual use of the Y trademark does not significantly affect beverage sales, because Company A actually already has a strong trademark.

Judging from some specific technical questions submitted by WCO member countries regarding the utilization of transfer pricing reports in the research of relationship between buyers and sellers, it is seen that in developed countries, Advance Pricing Arrangements (APA) have been used as dispute resolution tools related to transfer pricing between taxpayers and the tax authority. APA is an arrangement with a set of criteria that is appropriate for determining transfer pricing, before a transaction occurs (for example methods, comparable data and reasonable adjustments to the comparative data, assumptions about future events).

The conclusion of the above article is that Customs Administration, especially PCA, is obliged to see Transfer Pricing issues comprehensively. Transfer Pricing is not a crime, but needs to be investigated. The tax avoidance model can be disguised in Transfer Pricing, so it is deemed necessary to cooperate with Tax Authorities. PCA can request Transfer Pricing documents (TP Docs), in some countries, to see whether the relationship between buyers and sellers affects prices, and whether there are taxes that are deliberately avoided.

"... NO SCUTAGE NOR AIR SHOULD BE LEVIED WITHOUT THE CONSENT OF THE COUNSEL OF THE REALM ..." ...
Magna Charta Libertatum year 1215



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